

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 209

AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 3-10-1-31.1, AS AMENDED BY P.L.230-2005, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31.1. (a) This section applies only to election materials for elections held after December 31, 2003.

(b) The inspector of each precinct shall deliver the bags required by section 30(a) and 30(c) of this chapter in good condition, together with poll lists, tally sheets, and other forms, to the circuit court clerk when making returns.

(c) Except for unused ballots disposed of under IC 3-11-3-31 or affidavits received by the county election board under IC 3-14-5-2 for delivery to the foreman of a grand jury, the circuit court clerk shall seal the ballots and other material during the time allowed to file a verified petition or cross-petition for a recount of votes or to contest the election. Except as provided in subsection (d) **and notwithstanding any other provision of Indiana law**, after the recount or contest filing period, the election material, **including election material related to provisional ballots** (except for ballots **and provisional ballots**, which remain confidential) shall be made available for copying and inspection under IC 5-14-3. The circuit court clerk shall carefully preserve the sealed ballots and other material for twenty-two (22) months, as required by 42 U.S.C. 1974, after which the sealed ballots and other

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material are subject to IC 5-15-6 unless an order issued under:

- (1) IC 3-12-6-19 or IC 3-12-11-16; or
- (2) 42 U.S.C. 1973;

requires the continued preservation of the ballots or other material.

(d) If a petition for a recount or contest is filed, the **following apply:**

(1) The material for that election remains confidential until completion of the recount or contest.

(2) Notwithstanding subdivision (1), material related to the provisional ballots cast in that election remains confidential for six (6) months after the completion of the recount or contest.

(e) Upon delivery of the poll lists, the county voter registration office may unseal the envelopes containing the poll lists. For the purposes of:

- (1) a cancellation of registration conducted under IC 3-7-43 through IC 3-7-46;
- (2) a transfer of registration conducted under IC 3-7-39, IC 3-7-40, or IC 3-7-42;
- (3) a change of name made under IC 3-7-41;
- (4) adding the registration of a voter under IC 3-7-48-8; or
- (5) recording that a voter subject to IC 3-7-33-4.5 submitted the documentation required under 42 U.S.C. 15483 and IC 3-11-8 or IC 3-11-10;

the county voter registration office may inspect the poll lists and update the registration record of the county. The county voter registration office shall use the poll lists to update the registration record to include the voter's voter identification number if the voter's voter identification number is not already included in the registration record. Upon completion of the inspection, the poll list shall be preserved with the ballots and other materials in the manner prescribed by subsection (c) for the period prescribed by subsections (c) and (d).

(f) This subsection does not apply to ballots, **including provisional ballots.** Notwithstanding subsection (c), if a county voter registration office determines that the inspection and copying of precinct election material would reveal the political parties, candidates, and public questions for which an individual cast an absentee ballot, the county voter registration office shall keep confidential only that part of the election material necessary to protect the secrecy of the voter's ballot. **In addition, the county voter registration office shall keep confidential information contained in material related to provisional ballots that identifies an individual, except for the individual's name, address, and birth date.**

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(g) After the expiration of the period described in subsection (c) or (d), the ballots may be destroyed in the manner provided by IC 3-11-3-31 or transferred to a state educational institution as provided by IC 3-12-2-12.

SECTION 2. IC 3-11-3-11, AS AMENDED BY P.L.230-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

(1) The supplies provided for the inspector's precinct by the election division.

(2) The local sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.

(3) The local ballots printed under the direction of the county election board as follows:

(A) In those precincts where ballot card voting systems are to be used, the number of ballots at least equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where electronic voting systems are to be used, the number of ballots that will be required to be printed and furnished to the precincts for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

(5) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.

(6) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482 **and IC 3-11.7-2-2**. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).

SECTION 3. IC 3-11-8-25.2, AS AMENDED BY P.L.164-2006, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25.2. (a) The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in

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person, the poll clerk shall advise the voter that the voter must present, in addition to the proof of identification required by section 25.1(a) of this chapter, a piece of identification described in subsection (b) to the poll clerk.

(b) As required by 42 U.S.C. 15483, and in addition to the proof of identification required by section 25.1(a) of this chapter, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

- (1) A current and valid photo identification.
- (2) A current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(c) If a voter presents a document under subsection (b), the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(d) If a voter required to present documentation under subsection (b) is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11.7-2.

(e) The precinct election board shall advise the voter, **both orally and in writing**, that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

(f) The circuit court clerk shall provide the notice required by IC 3-11.7-6-4 to a voter who casts a provisional ballot under this section.

SECTION 4. IC 3-11-10-24, AS AMENDED BY P.L.103-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

- (1) The voter has a specific, reasonable expectation of being absent from the county on election day during the entire twelve (12) hours that the polls are open.
- (2) The voter will be absent from the precinct of the voter's residence on election day because of service as:
 - (A) a precinct election officer under IC 3-6-6;
 - (B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;
 - (C) a challenger or pollbook holder under IC 3-6-7; or
 - (D) a person employed by an election board to administer the

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election for which the absentee ballot is requested.

(3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire twelve (12) hours that the polls are open.

(4) The voter is a voter with disabilities.

(5) The voter is an elderly voter.

(6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire twelve (12) hours that the polls are open.

(7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(9) The voter is prevented from voting due to observance of a religious discipline or religious holiday during the entire twelve (12) hours that the polls are open.

(10) The voter is an address confidentiality program participant (as defined in IC 5-26.5-1-6).

(11) The voter is a resident of a vote center county.

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose.

The voter shall:

(1) deposit the sealed envelope in the United States mail for delivery to the county election board; or

(2) authorize a member of the voter's household or the individual designated as the voter's attorney in fact to:

(A) deposit the sealed envelope in the United States mail; or

(B) deliver the sealed envelope in person to the county election board.

(d) If a member of the voter's household or the voter's attorney in fact delivers the sealed envelope containing a voter's absentee ballot to the county election board, the individual delivering the ballot shall complete an affidavit in a form prescribed by the commission. The

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affidavit must contain the following information:

- (1) The name and residence address of the voter whose absentee ballot is being delivered.
- (2) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the individual delivering the absentee ballot.
- (3) A statement indicating whether the individual delivering the absentee ballot is a member of the voter's household or is the attorney in fact for the voter. If the individual is the attorney in fact for the voter, the individual must attach a copy of the power of attorney for the voter, unless a copy of this document has already been filed with the county election board.
- (4) The date and location at which the absentee ballot was delivered by the voter to the individual delivering the ballot to the county election board.
- (5) A statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots.
- (6) A statement that the individual delivering the absentee ballot is executing the affidavit under the penalties of perjury.
- (7) A statement setting forth the penalties for perjury.

(e) The county election board shall record the date and time that the affidavit under subsection (d) was filed with the board.

(f) After a voter has mailed or delivered an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

- (1) section 1.5 of this chapter; or
- (2) section 33 of this chapter.

SECTION 5. IC 3-11-10-26, AS AMENDED BY P.L.164-2006, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) As an alternative to voting by mail, a voter is entitled to cast an absentee ballot before an absentee voter board:

- (1) in the office of the circuit court clerk (or board of elections and registration in a county subject to IC 3-6-5.2); or
- (2) at a satellite office established under section 26.3 of this chapter.

(b) The voter must:

- (1) sign an application on the form prescribed by the commission under IC 3-11-4-5.1; and
- (2) provide proof of identification;

before being permitted to vote. The application must be received by the circuit court clerk not later than the time prescribed by IC 3-11-4-3.

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(c) The voter may vote before the board not more than twenty-nine (29) days nor later than noon on the day before election day.

(d) An absent uniformed services voter who is eligible to vote by absentee ballot in the circuit court clerk's office under IC 3-7-36-14 may vote before the board not earlier than twenty-nine (29) days before the election and not later than noon on election day. If a voter described by this subsection wishes to cast an absentee ballot during the period beginning at noon on the day before election day and ending at noon on election day, the county election board or absentee voter board may receive and process the ballot at a location designated by resolution of the county election board.

(e) The absentee voter board in the office of the circuit court clerk must permit voters to cast absentee ballots under this section for at least seven (7) hours on each of the two (2) Saturdays preceding election day.

(f) Notwithstanding subsection (e), in a county with a population of less than twenty thousand (20,000), the absentee voter board in the office of the circuit court clerk, with the approval of the county election board, may reduce the number of hours available to cast absentee ballots under this section to a minimum of four (4) hours on each of the two (2) Saturdays preceding election day.

(g) As provided by 42 U.S.C. 15481, a voter casting an absentee ballot under this section must be:

- (1) permitted to verify in a private and independent manner the votes selected by the voter before the ballot is cast and counted;
- (2) provided with the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and
- (3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

(h) As provided by 42 U.S.C. 15481, when an absentee ballot is provided under this section, the board must also provide the voter with:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

(i) If:

- (1) the voter is unable or declines to present the proof of identification; or

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(2) a member of the board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.5;

the voter shall be permitted to cast an absentee ballot and the voter's absentee ballot shall be treated as a provisional ballot.

(j) This subsection applies to a voter who casts an absentee ballot that is treated as a provisional ballot under subsection (i). The board shall provide the voter, both orally and in writing, an explanation of what actions, if any, the voter must take in order to have the voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the voter.

SECTION 6. IC 3-11-10-26.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26.3. (a) A county election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices in the county where voters may cast absentee ballots before an absentee voter board.

~~(b) To be adopted under this section, a resolution must be adopted by the unanimous vote of the board's entire membership.~~

~~(c)~~ **(b)** A resolution adopted under this section must do the following:

- (1) State the locations of the satellite offices.
- (2) State the hours at which absentee voting may occur at the satellite offices.

~~(d)~~ **(c)** The resolution may contain other provisions the board considers useful.

~~(e)~~ **(d)** If a resolution is adopted under this section, the procedure for casting an absentee ballot at a satellite office must, except as provided in this section, be substantially the same as the procedure for casting an absentee ballot in the office of the circuit court clerk.

SECTION 7. IC 3-11-18-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. **(a) The following counties are designated as vote center pilot counties under this chapter:**

- (1) Cass County**
- (2) Johnson County.**
- (3) Tippecanoe County.**
- (4) Wayne County.**

(b) The counties designated as voter center pilot counties under subsection (a) shall establish at least one (1) satellite office under IC 3-11-10-26.3.

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(c) In addition to the requirements of subsection (b), the following counties continue to be subject to the county's plan adopted under this chapter and as permitted to be amended by this chapter:

- (1) Cass County.
- (2) Tippecanoe County.
- (3) Wayne County.

(d) Before Johnson County may operate as a vote center pilot county under this chapter, the county must comply with all requirements of this chapter for a county to be designated as a vote center county.

SECTION 8. IC 3-11.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A provisional voter shall do the following:

- (1) Mark the ballot in the presence of no other person, unless the voter requests help in marking a ballot under IC 3-11-9.
- (2) Fold each ballot separately.
- (3) Fold each ballot so as to conceal the marking.
- (4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the envelope provided by the county election board under IC 3-11.7-1-8.
- (5) Securely seal the envelope.

(b) A provisional voter may mark a ballot with a pen or a lead pencil.

(c) This subsection applies to a provisional voter described in section 1(a)(1), 1(a)(2), or 1(a)(3) of this chapter. As provided by 42 U.S.C. 15482, a precinct election officer shall give the provisional voter a copy of the written instructions prescribed by the county election board under IC 3-11.7-6-3 after the voter returns the envelope containing the provisional voter's ballots.

(d) This subsection applies to a provisional voter described in section 1(a) or 1(b) of this chapter. In addition to the written instructions required by subsection (c), a precinct election officer shall provide the provisional voter, both orally and in writing, an explanation of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the provisional voter.

SECTION 9. IC 3-11.7-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As required by

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42 U.S.C. 15482, a county election board shall establish a free access system such as a toll-free telephone number or an Internet web site that enables a provisional voter to determine:

- (1) whether the individual's provisional ballot was counted; and
- (2) if the provisional ballot was not counted, the reason the provisional ballot was not counted.

(b) As required by 42 U.S.C. 15482, the county election board shall establish and maintain reasonable procedures to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used on the free access system established by the board under subsection (a).

(c) As required by 42 U.S.C. 15482, the county election board shall restrict access to the ~~information available free access system established~~ under subsection (a) ~~about a provisional voter's ballot~~ to the individual voter who cast the **provisional** ballot. **This subsection does not restrict access to election materials available under IC 3-10-1-31.1.**

(d) The county election board shall prescribe written instructions to inform a provisional voter how the provisional voter can determine whether the provisional voter's ballot has been counted.

(e) Notwithstanding subsections (b) and (c), the county election board shall provide to the following, upon request, a list of the name and address of all voters who have cast a provisional ballot in an election held in the county:

- (1) A candidate whose name was on the ballot in the county at the election.**
- (2) The county chairman of a political party of the county in which the election was held.**

The county election board shall provide a list requested under this subsection not later than seventy-two (72) hours after the time the list is requested.

SECTION 10. IC 3-11.7-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies to a county that conducts an election in which a voter casts a provisional ballot.**

(b) Not later than three (3) calendar days after election day, the circuit court clerk shall provide a notice containing the following information to each voter described in subsection (a):

- (1) The reason or reasons that the voter's ballot is being treated as a provisional ballot.**
- (2) A description of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot**

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counted under this article.

(3) The deadlines by which the provisional voter is required to take any actions described in subdivision (2) in order to have the provisional voter's ballot counted under this article.

(4) The following information that will enable the provisional voter to inquire about the provisional voter's ballot:

(A) The name of the office that the provisional voter may contact.

(B) The address of the office described in clause (A).

(C) The telephone number at the office described in clause (A) that the voter may use to contact the office about the voter's provisional ballot.

(D) Any other information the circuit court clerk considers useful to provide assistance to the provisional voter in inquiring about the provisional ballot.

(c) The notice required by subsection (b) must be:

(1) sent by first class United States mail; or

(2) given by another method the circuit court clerk determines will provide actual notice to the voter.

(d) The notice required by subsection (b) must be in a form prescribed by the commission.

SECTION 11. IC 3-11.7-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Not later than thirty (30) days after an election, the circuit court clerk shall compile a report that includes the following information:

(1) The number of provisional ballots cast at the election in the county.

(2) The following information relating to the provisional ballots cast:

(A) A list of the reasons that provisional ballots were cast.

(B) For each reason listed, the number of provisional ballots cast for that reason.

(3) The number of provisional ballots counted for that election.

(4) The following information relating to the provisional ballots that were not counted:

(A) A list of reasons that provisional ballots were not counted.

(B) For each reason listed, the number of provisional ballots not counted for that reason.

(b) The circuit court clerk shall:

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(1) make the report available for public inspection and copying under IC 5-14-3; and

(2) send a copy of the report to the secretary of state.

(c) The secretary of state shall compile the reports sent by the circuit court clerks under subsection (b). Not later than December 31 of each year, the secretary of state shall issue a statewide compilation of all the reports sent to the secretary of state under subsection (b). The statewide compilation must include the following information:

(1) All the information contained in the county reports, by county.

(2) Statewide totals for each item of information required to be contained in the county reports under subsection (a).

(d) The secretary of state shall make the statewide compilation available for public inspection and copying under IC 5-14-3.

(e) The secretary of state shall develop uniform descriptions of the following information required to be compiled under subsection (a):

(1) The reasons that a provisional ballot is cast.

(2) The reasons that a provisional ballot is not counted.

SECTION 12. IC 3-14-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as provided in subsection (b), a precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Class D felony.

(b) A person who has a duty to give a voter notice under:

(1) IC 3-11-8-25.2(f);

(2) IC 3-11-10-26(j);

(3) IC 3-11.7-2-2(d); or

(4) IC 3-11.7-6-4;

who knowingly or intentionally fails to provide the notice required by that statute commits a Class C infraction.

SECTION 13. P.L.108-2008, SECTION 4, IS REPEALED [EFFECTIVE JULY 1, 2009].

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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